(9) (7)

**Nos. 03-184 and 03-1034**

Supreme Court, U.S.
FILED
AUG 2 - 2004
OFFICE OF THE CLERK

IN THE

# Supreme Court of the United States

CLAUDE M. BALLARD AND MARY B. BALLARD,
*Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE,
*Respondent.*

ESTATE OF BURTON W. KANTER, ET AL.,
*Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE,
*Respondent.*

**On Writ of Certiorari to the United States Court of Appeals for the Seventh and Eleventh Circuits**

## JOINT APPENDIX

VESTER T. HUGHES, JR.
*Counsel of Record*
ROBERT E. DAVIS
DAVID J. SCHENCK
CHRISTOPHER D. KRATOVIL
HUGHES & LUCE, LLP
1717 Main Street, Suite 2800
Dallas, Texas 75201
(214) 939-5500

*Counsel for Petitioners Claude M. Ballard and Mary B. Ballard*

RICHARD H. PILDES
*Counsel of Record*
40 Washington Square South
New York, NY 10012
(212) 998-6377

*Counsel for Estate of Burton W. Kanter, et al.,*

PAUL D. CLEMENT
*Acting Solicitor General*
U.S. DEPT. OF JUSTICE
Washington, DC 20530

*Counsel for Respondent Commissioner of Internal Revenue*

[Additional Counsel listed on inside cover]

PETITIONS FOR CERTIORARI FILED AUG. 4, 20003 AND JAN. 20, 2004
CERTIORARI GRANTED APRIL 26, 2004

STEVEN S. BROWN
ROYAL B. MARTIN
WILLIAM G. SULLIVAN
MARTIN, BROWN & SULLIVAN
321 S. Plymouth Ct., 10th Flr.
Chicago, Illinois 60604
(312) 360-5000

*Counsel for Petitioners*
*Claude M. Ballard and*
*Mary B. Ballard*

PHILIP ALLEN LACOVARA
LAUREN R. GOLDMAN
KRISTINA S. BENNARD
TODD E. LUNDELL
MAYER, BROWN, ROWE
& MAW LLP
1675 Broadway
New York, NY 10019

*Counsel for Petitioners*
*Estate of Burton W.*
*Kanter, et al.,*

STEPHEN M. SHAPIRO
MAYER, BROWN, ROWE
& MAW LLP
190 South LaSalle Street
Chicago, IL 60603

*Counsel for Petitioners*
*Estate of Burton W.*
*Kanter, et al.,*

N. JEROLD COHEN
TERESA WYNN ROSEBOROUGH
MATTHEW J. GRIES
SUTHERLAND ASBILL &
BRENNAN LLP
999 Peachtree Street N.E.
Atlanta, GA 30309

*Counsel for Petitioners*
*Estate of Burton W.*
*Kanter, et al.,*

RANDALL G. DICK
LAW OFFICE OF RANDALL G. DICK
744 Montgomery Street
Third Floor
San Francisco, CA 94111

*Counsel for Petitioners*
*Estate of Burton W.*
*Kanter, et al.,*

PETER J. RUBIN
GEORGETOWN UNIVERSITY LAW
CENTER
600 New Jersey Ave., NW
Washington, DC 20001

*Counsel for Petitioners*
*Estate of Burton W.*
*Kanter, et al.,*

# IN THE UNITED STATE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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01-172949-GG

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CLAUDE M. BALLARD,

v.

C.I.R.

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## DOCKET ENTRIES

| File Date | Entry | Party |
|---|---|---|
| 01/24/2002 | Motion to Stay Proceedings: Appellant-Ballard, Claude M. (Atty: Steven Spencer Brown) | Claude M. Ballard |
| 01/31/2002 | Response in Opposition to Motion to Stay Appeals | |
| 02/01/2002 | Reply in Support of Motion to Stay | |
| 03/27/2002 | Appellant's Brief Filed: Appellant-Ballard, Claude M. (Atty: Robert Edwin Davis): Appellant-Ballard, Mary B. (Atty: Robert Edwin Davis) | Mary B. Ballard |
| 05/06/2002 | Appellee Brief Filed: Appellee-Commissioner of Internal Revenue, (Atty: Joan I. Openheimer) | |
| 05/30/2002 | Reply Brief Filed: Appellant-Ballard, Claude M. (Atty: Robert Edwin Davis): Appellant-Ballard, Claude M. (Atty: Robert Edwin Davis): Appellant-Ballard, Mary B. (Atty: Robert Edwin Davis) | |

| | | |
|---|---|---|
| 07/29/2002 | Appellant's Unopposed Motion for additional time for oral argument is hereby GRANTED..in part. Each side shall have (20) Twenty minutes for oral argument..: (Atty: Vester T. Hughes, Jr.) | |
| 02/13/2003 | OPINIA (Opinion - Issuance with Costs) issued. costs taxed against petitioners-appellants. cc: Brown, Steven Spencer cc: Hughes, Vester T., Jr. cc: Davis, Robert Edwin cc: Schenck, David J. cc: Martin, Royal B., Jr. cc: Openheimer, Joan I. cc: Gibson, J+ | |
| 02/13/2003 | Judgment Entered | |
| 03/28/2003 | Petition for Rehearing En Banc: Ballard, Claude M., Ballard, Mary B. (Atty: Robert Edwin Davis): | Claude M. Ballard |
| 05/22/2003 | The motion of Appellants, for STAY of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including 8/4/03...PTF/See file for Complete Text | |

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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ESTATE OF BURTON W. KANTER,
*Plaintiff/Petitioner,*
v.

C.I.R.,
*Defendant.*

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**DOCKET ENTRIES**

| DATE | ENTRY |
|---|---|
| 12/26/01 | Tax court case docketed. [01-4316] [1465040-1] Appellant's brief due 2/5/02 for Estate Burton Kanter. Docketing Statement due 1/3/02. (land) [01-4316] |
| 9/4/02 | Case heard and taken under advisement by panel: Chief Judge Joel M. Flaum, Circuit Judge Richard D. Cudahy, Circuit Judge Michael S. Kanne. [01-4316, 01-4317, 01-4318, 01-4319, 01-4320, 01-4321, 01-4322, 02-1220] [1544207-1] (broo) [01-4316 01-4317 01-4318 01-4319 01-4320 01-4321 01-4322 02-1220] |
| 7/24/03 | Filed opinion of the court PER CURIAM. We AFFIRM in part and REVERSE in part the decision of the Tax Court. Chief Judge Joel M. Flaum, Circuit Judge Richard D. Cudahy, concurring in part and dissenting in part, Circuit Judge Michael S. Kanne. [01-4316, 01-4317, 01-4318, 01-4319, 01-4320, 01-4321, 01-4322, 02-1220] [1465052-1] (amyd) [01-4316 01-4317 01-4318 01-4319 01-4320 01-4321 01-4322 02-1220] |

| DATE | ENTRY |
|---|---|
| 7/24/03 | ORDER: Final judgment filed per opinion. Petitioners-appellants to pay costs. [01-4316, 01-4317, 01-4318, 01-4319, 01-4320, 01-4321, 01-4322, 02-1220] [0-0] (amyd) [01-4316 01-4317 01-4318 01-4319 01-4320 01-4321 01-4322 02-1220] |
| 9/8/03 | Filed 30c Petition for Rehearing and Petition for Rehearing Enbanc by Appellant Estate Burton Kanter in 01-4316, Appellant Estate Burton Kanter in 01-4317, Appellant Estate Burton Kanter in 01-4318, Appellant Estate Burton Kanter in 01-4319, Appellant Estate Burton Kanter in 01-4320, Appellant Estate Burton Kanter in 01-4321, Appellant Estate Burton Kanter in 01-4322, Appellant Naomi R. Kanter in 02-1220. Dist. [01-4316, 01-4317, 01-4318, 01-4319, 01-4320, 01-4321, 01-4322, 02-1220] [1658913-1] (tiff) [01-4316 01-4317 01-4318 01-4319 01-4320 01-4321 01-4322 02-1220] |
| 10/21/03 | ORDER: Appellant Estate Burton Kanter in 01-4316, Appellant Estate Burton Kanter in 01-4317, Appellant Estate Burton Kanter in 01-4318, Appellant Estate Burton Kanter in 01-4319, Appellant Naomi R. Kanter in 01-4320, Appellant Estate Burton Kanter in 01-4320, Appellant Estate Burton Kanter in 01-4321, Appellant Estate Burton Kanter in 01-4322, Appellant Naomi R. Kanter in 02-1220 Petition for Rehearing and Petition for Rehearing Enbanc is DENIED. [01-4316, 01-4317, 01-4318, 01-4319, 01-4320, 01-4321, 01-4322, 02-1220] [1658913-1] (tiff) [01-4316 01-4317 01-4318 01-4319 01-4320 01-4321 01-4322 02-1220] |

| DATE | ENTRY |
|---|---|
| 10/29/03 | MANDATE ISSUED AND ENTIRE RECORD RETURNED WITH BILL OF COSTS IN THE AMOUNT OF $114.40. (Contents returned: 44 vol. pleadings; 3 exhibits.) [01-4316, 01-4317, 01-4318, 01-4319, 01-4320, 01-4321, 01-4322, 02-1220] [1597404-1] (amyd) [01-4316 01-4317 01-4318 01-4319 01-4320 01-4321 01-4322 02-1220] |
| 4/26/04 | Filed order from the Supreme Court GRANTING the Petition for Writ of Certiorari. Supreme Court Case No.: 03-1034. [01-4316, 01-4317, 01-4318, 01-4319, 01-4320, 01-4321, 01-4322, 02-1220] [1756190-1] (jame) [01-4316 01-4317 01-4318 01-4319 01-4320 01-4321 01-4322 02-1220] |

UNITED STATES TAX COURT

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CLAUDE M. BALLARD AND BURTON W. KANTER,

v.

C.I.R.,

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Consolidated Docket Nos.
43966-85, 712-86, 45273-86, 1350-87, 31301-87, 33557-87, 3456-88, 30830-88, 32103-88, 27444-89, 16421-90, 25875-90, 26251-90, 20211-91, 20219-91, 21555-91, 21616-91, 23178-91, 24002-91, 1984-92, 16164-92, 19314-92, 23743-92, 26918-92, 7557-93, 22884-93, 25976-93, & 25981-93

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**DOCKET ENTRIES**

| DATE | EVENT | FILINGS AND PROCEEDINGS |
|---|---|---|
| 01/09/86 | PF | PETITION Filed: Fee Paid |
| 07/14/87 | OAJ | ORDER that case is assigned to Judge Williams. |
| 07/18/90 | ORJ | ORDER that case is reassigned to Judge Halpern. |
| 01/07/94 | ORJ | ORDER that case is reassigned to Judge Covillion. |
| 01/14/94 | O | ORDER set 6/13/94 Chicago, IL (Spec.) for trial. All mots. by any party to be filed by 5/23/94. |

| DATE | EVENT | FILINGS AND PROCEEDINGS |
|---|---|---|
| 06/13/94 | PTRL | PARTIAL TRIAL before S.T. Judge Couvillion at Chicago, IL Also called 6/14, 15, 16, 17, 20, 21, 22, 23 & 24. Resp's amendment to answer filed & served 6/13/94 (see below). Petrs' reply to amendment to answer filed & served 6/13/94 see below). Declaration by third party Solomon Weisgal filed 6/13/94 (see below). Resp's 5 mots. to compel compliance with subpoenas filed 6/20/94—Dn. (see below). Continued for further trial—SEE ORDER. NO BRIEFS DUE. |
| 07/25/94 | FTRL | FURTHER TRIAL before S.T. Judge Couvillion at Chicago, IL |
| 02/14/95 | O | ORDER record is closed. |
| 05/15/95 | BFR | BRIEF for resp. (Leave Gr.) |
| 05/15/95 | BFP | BRIEF for petr. (Leave Gr.) |
| 12/15/99 | ORJ | ORDER that case is reassigned to Judge Dawson. |
| 12/15/99 | MOP5 | MEMORANDUM OPINION, Judge Dawson T.C. Memo 1999-407 (adopting opinion of S.T. Judge Couvillion). (Decisions in all dockets will be entered under Rule 155.) |
| 01/24/00 | O | ORDER mot. to ext. time is gr. in that time ext. to 5/15/00 for all parties to file any mot. for recons. & supporting memo. (Special instructions including limit on no. of pages in mot. & memo.) Parties by 3/15/00 file memorandum report. |

| DATE | EVENT | FILINGS AND PROCEEDINGS |
|---|---|---|
| 04/20/00 | MOTP | MOTION by petr. for access to original special trial judge report prepared under Rule 183(b), including request for interlocutory appeal & request that materials be made part of the record. (C/S 4/19/00) (Leave Gr.) |
| 04/20/00 | MEMO | MEMORANDUM OF POINTS & AUTHORITIES by Petrs. in support of mot. for access to original special trial judge report, etc. (C/S 4/19/00) (Leave Gr.) |
| 04/26/00 | O | ORDER Petrs' mot. for access to original special trial judge report, including request for interlocutory appeal & request that materials be made part of the record, is dn. |
| 05/03/00 | MOTP | MOTION by petr. for ext. of time to file mot. for recons. of opinion. (C/S 4/27/00) |
| 05/04/00 | O | ORDER Petrs' mot. to ext. time to file mot. for recons. is gr. in that time ext. to 6/2/00. |
| 05/23/00 | MOTP | MOTION by petr. to ext. time to 7/3/00 to file mot. for recons. (C/S 5/22/00) |
| 05/26/00 | MOTP | MOTION by petr. to place original special trial judge report under seal & made part of record for review by circuit court of appeals. (C/S 5/25/00) (per Judge) |
| 07/31/00 | MEMO | MEMO MEMORANDUM OF POINTS & AUTHORITIES by Petr. Kanter in support of mot. to reopen record & for recons. (per Judge) |

| DATE | EVENT | FILINGS AND PROCEEDINGS |
|---|---|---|
| 08/22/00 | MOTP | MOTION by petr. to reconsider Court's denial of Petrs' mot. for access to original special trial judge report prepared under Rule 183(b) or, in the alternative, for new trial. w/Ex. (C/S 8/21/00) (per Judge) |
| 08/30/00 | O | ORDER Petrs' mot. to reconsider Court's denial of Petrs' mot. for access to original special trial judge report or for new trial is dn. |
| 12/05/00 | MOTP | MOTION by petr. to stay entry of decision until ruling on Petrs' ORD 12/21/00 petition for writ of mandamus in Court of Appeals. (C/S 12/4/00) |
| 12/21/00 | O | ORDER Petrs' mot. to stay entry of dec. is dn. w/Exs. att'd |
| 09/24/01 | DEC | DECISION ENTERED, Judge Dawson |
| 12/14/01 | NOAP | U.S.C.A., 7th Cir. C/S 12-13-01. FEE PAID. (petr. Estate of Burton W. Kanter, Dec'd., Joshua S. Kanter, Executor) C.A.#01-4316. |
| 12/26/01 | NOAP | NOTICE OF APPEAL by petr. To U.S.C.A., 11th Cir. FEE PAID. C.A.#01-17251-I |

**U.S. TAX COURT**

DOCKET NUMBER: 43966-85, 712-86, 45273-86, 1350-87, 31301-87, 33557-87, 3456-88, 30830-88, 32103-88, 27444-89, 16421-90, 25875-90, 26251-90, 20211-91, 20219-91, 21555-91, 21616-91, 23178-91, 24002-91, 1984-92, 16164-92, 19314-92, 23743-92, 26918-92, 7557-93, 22884-93, 25976-93, 25981-93

In The Matter of:

INVESTMENT RESEARCH ASSOCIATES, LTD., AND SUBSIDIARIES, *et al.*,

*Petitioners*,

vs.

COMMISSIONER OF THE INTERNAL REVENUE,

*Respondent.*

Volume I

Pages: 1-260

Location: Chicago, Illinois

Date: June 13, 1994

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On The Record Reporting, Inc.
5926 Balcones Drive, Suite 115
Austin, Texas 78731
(521) 450-0342

[420] Q That is the—the bank where the check was ultimately cashed imprints that number on there. Now, on -37 there is no such number on the lower right-hand corner. Do you see that?

A Yes.

Q So it means that the copy of this check was made before the check was negotiated, since there is no bank number in the lower right-hand corner. Do you know why it is that one of the checks that you sent to the government was a check that came after negotiation and one was a check that was photocopied by you before negotiation?

A I would have no idea.

Q You have no idea? I would imagine this must have been done by somebody in your office?

A Don't know. Have no idea.

Q Now, Mr. Schaffel, to your knowledge, did Robert Lisle or Claude Ballard ever use any influence to obtain business for you, any persons or entities with which you were in business, at either Prudential Insurance Company or Travelers Insurance?

A No.

Q Did you ever intend to compensate either Claude Ballard or Robert Lisle for any business that you or any entity or persons with whom you were in business at either Prudential Insurance Company or Travelers?

A Never.

Q And do you have any knowledge of any payments to either Mr. Ballard or Mr. Lisle by virtue of any business that you or any person or entity with whom you were in business at Prudential Insurance Company or Travelers Insurance?

A No.

MR. MARTIN: I have nothing further.

THE COURT: Mr. Dick?

MR. DICK: I just have one brief question.

CROSS-EXAMINATION

BY MR. DICK:

Q. Now, you discussed the One River Associates and I think you testified that that was not a Prudential or a Travelers deal. Is that correct?

A Yes.

Q Okay. And that was from a savings bank name of?

A The financing was created by the Howard Savings Bank as a joint venture.

Q So neither—

A And the lender was New York Life.

Q Okay. And neither Prudential Nor Travelers had any relationship with these.

* * * *

FREY - DIRECT [713]

examine? Mr. Martin?

CROSS-EXAMINATION

BY MR. MARTIN:

Q Mr. Frey, is it true that Mr. Kanter introduced You to Mr. Ballard for the purpose of causing Mr. Ballard -- for the purpose of influencing Mr. Ballard to do business with you?

A I don't recall that.

Q To your knowledge—

A I would say no.

Q To your knowledge, did Mr. Ballard ever use any influence to obtain business for you at the Prudential Insurance Company?

A Absolutely not. The business we got was on the merits.

Q Did you ever intend to compensate Mr. Ballard for any business that you did with Prudential?

A Absolutely not.

Q And do you have any knowledge of any -. compensation received by Mr. Ballard by virtue of business that you or your entities did with Prudential?

A Absolutely not.

MR. MARTIN: That is all I have got.

[714] FREY - CROSS

CROSS-EXAMINATION

BY MR. BROWN:

Q I will ask you similar questions for Mr. Lisle. To your knowledge, did Robert Lisle ever use any influence to obtain—

MR. DECATOR: Objection, Your Honor. This is beyond direct. We never even discussed Mr. Lisle in any way.

THE COURT: Well, the witness is on cross-examination. However, I do agree with you. I don't think Mr. Lisle's name was ever brought up on direct. But I think you could ask him whether or not he had any contact or knew Mr. Lisle.

BY MR. BROWN:

Q Have you ever met Mr. Robert Lisle?

A I don't believe so. He—after he left Prudential, he was at Travelers, and we went to Travelers one day. I don't think I am not sure we met him or not. we do.

Q Well, then, I will ask you the question. To your knowledge, did Robert Lisle ever use any influence to obtain business for you, any persons or entities with whom you were in business, either at Prudential or at Travelers?

A Absolutely not.

FREY – CROSS [715]

Q Did you ever intend to compensate Mr. Lisle, Mr. Robert Lisle, for any business that you or any entity or

persons with whom you were in business at either Prudential Insurance Company or Travelers Insurance Company—

A Absolutely not.

Q Do you have any knowledge of any payments to either—to Mr. Robert Lisle by virtue of any business that you or any person or entity with whom you were in business at either Prudential Insurance Company or Travelers Insurance Company?

A Absolutely not.

MR. BROWN: No more questions.

THE COURT: Mr. Dick?

MR. DICK: Yes, Your Honor. Just one minute.
(Pause. )

CROSS-EXAMINATION

BY MR. DICK:

Q I am going to hand you what has been entered into evidence as Exhibit 458 and direct your attention to page 2 of that document.

A Yes.

Q And I know this is hard to read, but in paragraph 6, it says, "The contribution of each limited partner is as follows." Do you see that?

* * * *

SCHNITZER - CROSS [2188]

But if I was to tell you that if Mr. Ballard or Mr. Lisle had ever been asked to intervene, that would have been the quickest way f o r us to have lost the regional business.

It is not—they could never help you. They could hurt you. And I am sure that if they didn't—wouldn't have wanted us to have the business, we couldn't have had it. But they sure as hell couldn't have gotten it for us and allowed us to keep it.

Q Now, who on the PMS side would do the negotiating with these regional people from insurance companies and other people?

A Most of the time it was done at a very senior level, but originally a man by the name of Burrows—Roland Burrows; following that, a man by the name of Joe Hudec, who was president. But they always worked with our regional person involved in that particular territory. So it was—but it required a very senior person to be dealing with that kind of—

Q So Mr. Hudec or Mr. Burrows, during the '70s, would have been doing this negotiation.

A Yes, sir.

Q And PMS did a good job, and that is why they are continuing to get business.

A Correct.

* * * *

SCHNITZER - CROSS [2192]

Q And you have had—oh, gosh—two or more conversations with them in preparation for this morning?

A Yes, sir.

Q Did they ever ask you during any of those interviews whether or not you ever made a payoff or bribe of any kind to Mr. Lisle or Mr. Ballard?

A I don't think they asked that. They asked me if I knew that—

Q Did they ask you whether or not you had ever paid them for any influence at Prudential or Travelers?

A I don't recall, to be honest with you.

Q To your knowledge, did Mr. Lisle or Mr. Ballard ever use any influence to obtain business for you either—or any persons with whom you were in business at either Prudential Insurance Company or Travelers Insurance Company?

A No, sir.

Q Did you ever intend to compensate these—either Mr. Ballard or Mr. Lisle for any business that you or any entity or

persons with whom you were in business at either Prudential Insurance Company or Travelers Insurance Company?

A No, sir.

Q Do you have any knowledge of any payments to either Mr. Ballard or Mr. Lisle by virtue of any business

* * * *

[2216]

of things. And apparently that—apparently you have not been advised of those kind of things.

MR. DICK: No, Your Honor.

MR. COMEAU: Judge—

MR. DICK: All we did is receive 4,000 checks from the Respondent. And Respondent's position has always been, Well, we have them; they are somehow relevant; stipulate to them. And we have consistently said, No, we are not. Tell us what is important in each check, why you would like it, and then we will discuss it.

And we have also said, Judge, if it relates to IRA, TMT, BWK, Carlco, or Mr. Schaffel or any of these entities, obviously they are relevant. The rest are not relevant.

THE COURT: But volume-wise, how much are we looking at?

MR. DICK: 2,000 pieces of paper.

THE COURT: 2,000 pieces of paper?

MR. DICK: At least—which I had to look for the ones before.

MR. BROWN: Some of which are made out to Xerox Company and—

THE COURT: It strikes the Court that somehow or another Respondent is attempting to throw the audit process into the

Court's hands, and the Court is not [2217] willing to do an audit.

MR. COMEAU: We are not willing to—

THE COURT: As Respondent well knows, we don't do audits.

MR. COMEAU: We are not willing—we are not suggesting that.

THE COURT: Well, when you start talking about 2,000 exhibits—

MR. COMEAU: When we have ten years, Judge.

THE COURT:—besides what—besides everything else that has been presented to the Court, I don't know.

MR. COMEAU: Well, if the problem—if the method of proof the Government is using to show the money flowing through would be a source-and-application-of-funds method of proof, or if this was a bank deposit case, where you are trying to prove admitted income through a bank deposit case, all deposits to that account or checks withdrawn from those accounts, even if they may be checks to Commonwealth Edison for a utility bill, would be documents that would be relevant in this case.

THE COURT: That is correct, but that is a different matter together. When you are applying an indirect method of income, that is because when Respondent determines that the books and records are not adequate to [2218] determine the taxpayer's income.

MR. COMEAU: Right.

THE COURT: But this is a totally different matter. I don't think Respondent has ever claimed that there were no books and records kept from which income could be determined.

MR. COMEAU: No, we are not. But—

THE COURT: You are claiming fraud.

MR. COMEAU: We are claiming the monies went directly Right.

THE COURT: And you are claiming fraud, and when you start saying—when you start dumping 2,000 documents and saying, All right, the fraud is all in this—

MR. COMEAU: No. But my point is, to adequately trace the money through the various bank accounts, you need the deposits and the withdrawals. Now, if we just had—they said IFI is not a Petitioner in this case. Well, there are non-related Petitioners: IFI—

THE COURT: Well, I understand that—that were corporations of Mr. Kanter. I understand that. I don't have any problem with that, if money has flowed through IFI and whatever else—IFC and whatever.

MR. COMEAU: The Holding Company, a number of

* * * *

[2220]

MR. COMEAU:—because there is no witness that may have said there is a conspiracy, but the money will show it.

MR. BROWN: Here we go. Okay. NOW, what does a check to American Express or a check to Amoco [phonetic] have to do with this case? That is what the counsel—

THE COURT: That is my concern.

MR. BROWN: Exactly.

MR. COMEAU: Well, we will take the checks—

THE COURT: If you can come up with specific—checks for—on which you are basing your case that those matters definitely will be introduced into evidence. But I am

concerned over a conglomeration of checks, and I led to believe that that is what we are looking at here.

MR. DICK: It is.

MR. BROWN: Yes, Your Honor.

MR. DICK: And that is only for one year. 2,000 checks for one year, and we have ten years here. We are talking about 20,000 checks.

THE COURT: If there was fraud involved—and I am not saying that there was or there wasn't—I haven't heard all the evidence. But it seems to me that unrelated checks certainly would not help your case at all. If anything, they probably hurt your case, really.

To be honest, if you want to establish fraud, you better specify and come down to specifics and don't throw a bunch of documents at me, because then—you know, I am human, too, and I will certainly give a lot more attention to something if you can come up with specific transactions and trace it through.

Just because it is IFI, and even though IFI is not a litigant in this case, that is not what I am looking at. But 2,000 exhibits on a lot of checks that admittedly are unrelated to his and are even unrelated to any kind of fraud—payments to Amaco or whatever—unless you can show that a payment to Amaco was for the benefit of Mr. Kanter individually or whatever—I don't know.

But at this point, I think the objection is well taken to those exhibits.

MR. COMEAU: Okay. Then, at this point—

THE COURT: You know, you have got plenty of time left, you know, to put these documents in order.

MR. COMEAU: Okay. Then with that I lost this argument—you are right. I understand. I have an argument why I want them in. You have ruled.

THE COURT: That is correct.

MR. COMEAU: With this ruling in mind and the predicament that it now places me in at this stage of the trial, with no records that we—of the ones we do need in, instead of sitting here for the rest of the afternoon,

* * * *

[2332]

both sides have very strong feelings about their cases, but you have got to understand that the Court is a third party in this.

MR. DICK: I agree.

THE COURT: And the Court, you know, has rules to go by.

And I don't think either side is being fair to their clients. I am not—you know, maybe I am being critical and maybe I shouldn't be, but, you know—

MR. DICK: Well, I think you are being critical and you should be, Judge.

THE COURT:—the cases are not being presented in a fashion that lawyers who are skilled and schooled in tax law should know about. And I don't know who is really to blame for all that. But all I can say is both sides seem to me have blocked off any communications with each other.

And here we are drifting along, and I don't know where the hammer is going to fall, but it is going to fall at a certain point in time, and somebody will not have presented their case.

MR. DICK: Well, it certainly will not be the Petitioners, Your Honor.

THE COURT: Well, it may be.

MR. DICK: We are ready to go, Judge. We really are.

* * * *

CONNOLLY - CROSS [2669]

that came to you as Gateway was a result of the management fee that you earned under the contract with Prudential.

A That is correct.

Q And you gave a part of that management fee away to, in essence, MHM and other partners in Essex to get you all the support services that you must have had in order to keep the contract with Hilton—

A That is correct.

Q —with Prudential. Excuse me. And the reason for the participation of John Formby in Essex and the reason for your relationship with Formby was because of his position with MHM. Right?

A That is correct.

Q He was the in-house financial person for MHM. Right?

A That is correct.

Q And he then became your financial person for Gateway.

A That is correct.

Q And that is because of this Essex partnership. Right?

A That is correct.

Q. Through the payments that Gateway, your company made to Essex, the partnership, the 80 percent of the management—75 percent of the management fee

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according to the contract—through those payments did you ever intend to compensate Claude Ballard or Bob Lisle for exercising their influence to get you any management contract?

A Absolutely not.

Q To your knowledge, did either Claude Ballard or Bob Lisle have anything to do with your obtaining those two hotel contracts?

A No.

Q And in fact, isn't it true that at the time that you obtained the Midland Hotel contract, Claude Ballard was already gone from The Prudential?

A That is correct.

MR. MARTIN: I have nothing further.

THE COURT: Mr. Dick?

MR. DICK: No, Your Honor.

THE COURT: No further cross-examination.

Any redirect, Ms. Gibson?

MS. GIBSON: One moment, Your Honor. We have no further redirect.

THE COURT: All right. I believe that would conclude your testimony, Mr. Connolly.

THE WITNESS: Thank you, Your Honor.

THE COURT: Thank you.
(Whereupon, the witness was excused.)

* * * *



we put on rebuttal that this evidence is being introduced with respect to the Prudential schemes and any of the non-Prudential issues and amended answers have been stricken.

THE COURT: Oh, I see what you mean. Right. I have already stricken that. That is correct.

MR. DICK: So this has to do with the Prudential.

THE COURT: But I think Respondent would bear the burden on that too.

MR. DICK: I agree.

THE COURT: So your burden would be to show that this income is not related—is related to the Prudential five, or to the Prudential scheme, or "The Five." I might learn all this after a while.

MR. MARKLEY: We know what you mean, we understand.

THE COURT: Are we understood here?

MR. MARKLEY: We understand, yes.

THE COURT: So I will allow the documents if that what those documents purport to show.

MR. MARKLEY: That is what we would represent that they purport to show.

THE COURT: But I want you to understand the questions that Petitioners are raising. Just because you put the check in the record does not necessarily establish



your proof; it may or it may not.

MR. MARKLEY: I certainly have had a lot of trials where I put lots of evidence in and it didn't prove anything.

THE COURT: All I know is I am not the attorney, I haven't been working on this three, four, five or ten years that you all have been working on it, so please understand, just being hit cold I can't decipher among all the various entities and trusts and whatever.

MR. MARKLEY: Judge, we understand that when you throw notebooks down the stairs, the heaviest one to the bottom isn't necessarily the best. We understand that, and that is not what we are saying. We are saying we need to get it in to be

able to argue that something is worthwhile in there, and we understand that.

THE COURT: All right. I don't know whether this is an appropriate expression to make, but I believe Yogi Berra made the expression that you can observe a lot just by looking. So I want to be able to look so that I can observe and conclude what we have.

MR. MARKLEY: He also said, It is deja vu all over again.

THE COURT: I don't know that Yogi Berra did all these things, but he is getting a lot of credit for things that do make a lot of cornfield sense.

UNITED STATES TAX COURT

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CASE NAME: Investment Research Associates Inc., *et al.*

DOCKET NUMBER: 43966-85, *et al.*

We the undersigned, do hereby certify that the foregoing pages, numbers 5298 through 5411, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Judy Miller on August 17, 1994, before the United States Tax Court at its session in Chicago, Illinois, in accordance with the applicable provisions of the current verbatim reporting contract of the Court, and have verified the accuracy of the transcript against the verbal recording.

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